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Central Intelligence Agency

Washington, D.C. 20505

13 December 1996

MEMORANDUM FOR: Executive Director
Assassination Records Review Board

SUBJECT: (U) Identity of Human Sources

(We request that this memorandum be returned to CIA once the Review Board has completed its deliberations on the issues discussed below.)

1. (U) **Issue.** The purpose of this memorandum is to relate CIA's concerns to the Review Board regarding the release of the true names of human sources of intelligence which appear in the JFK Collection and to present a proposal on how this problem could be addressed.

I. Factual Background

2. (U) In general, CIA "sources" are foreign nationals, recruited and living in a foreign country, who provide information to the U.S. Government under a promise of confidentiality. Their act of passing information to the U.S. is generally against the national interest of their own country and would be considered espionage, which is a capital offense in most countries. Just as in this country when a spy is caught, should a CIA source be discovered, it would be "headline news," even 30 years after the fact. The Review Board will recall that when former National Security Agency employee Robert Lipka was arrested approximately a year ago for espionage he allegedly committed 30 years earlier, this received a lot of attention in the United States. Lipka is currently awaiting trial in the U.S. for his alleged espionage activities.

3. (U) This month, the Review Board will be considering approximately 50-60 true names of human sources for release. These particular sources range from encrypted

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assets to one-time contacts. It is our understanding that additional source names appear throughout the JFK Collection and will be reviewed in the future. It is important, therefore, that the Review Board and CIA agree on a consistent method of dealing with source names appearing in the JFK Collection at this time so as not to impede the future review of documents.

4. (C) The Review Board has recently developed a policy for releasing the true names of covert CIA employees. Although there are many similarities between covert employees and sources, there is an important difference that should be reflected in the way the Review Board looks at this issue. With CIA covert employees who are mentioned in this collection, it has been possible in some instances to go to them and seek their permission to reveal their names. Some of these former employees have even been made available for interviews and depositions. With most sources, it is not possible to do this. First, CIA has dropped contact with some of these sources and may not be able to locate them. Attempting to find these individuals would create some risk of creating suspicions that they were or are associated with this Agency or the U.S. Government. If CIA were unable to locate a particular source, there would still be some risk in releasing his name. Just because CIA cannot locate him, does not mean that he is not alive and well-known in his own community. Even if we were able to locate a source without risk to his safety, it is probable that he would not want to be visited by the CIA again after so many years. More than likely, sources do not now want their past association revealed when they have undoubtedly moved on in their lives to do other things. Some may be in political or private enterprise positions where CIA affiliation would damage them professionally and/or harm them and their families personally.

5. (U) Another important distinction that needs to be taken into account is the difference between CIA and Federal Bureau of Investigation (FBI) "sources." Perhaps the most significant difference is that many FBI sources provide information with the understanding that the information and the source will be publicly revealed. FBI sources are often used in criminal prosecutions as witnesses. CIA, on the other hand, promises secrecy and confidentiality to its sources. CIA sources rarely appear at public trials. In fact, not only is the identity of CIA sources protected from public acknowledgment, but also it is closely held within the Agency itself. Another difference is the fact that a

foreign national cooperating with CIA is usually committing a unique violation of his own country's laws--espionage. If one gets caught committing espionage, the punishment in many countries is for a capital offense. On the other hand, a foreigner who cooperates with the FBI is not usually committing espionage. Cooperation may be with the full knowledge of his government--such as cooperation in a criminal investigation. Therefore, the risks for cooperation with the FBI are not usually as great as cooperation with CIA. In addition, the FBI has greater means for protecting individuals who provide information to it, for example, the witness protection program, which CIA does not have.

II. Legal Considerations

6. (U) Although Section 11(a) of the JFK Act provides that when the Act requires release of information, it takes precedence over all other laws that would otherwise prohibit the true names of sources. CIA believes that it is important for the Review Board to consider the laws, which have been growing and developing over the years, to protect classified information because they clearly reflect a larger U.S. Government policy to protect intelligence sources.

7. (U) By Executive Order (E.O.)and statute, the President and Congress have made the Director of Central Intelligence (DCI) responsible for protecting intelligence sources. In his Directive of 22 January 1946 which established the Central Intelligence Group, President Truman made the DCI responsible for protecting sources. With the establishment of the CIA, Congress also gave the DCI this responsibility. The National Security Act of 1947, Section 103(d)(3), codified at 50 U.S.C. §403(3)(c)(5), ***requires*** the DCI to protect intelligence sources from unauthorized disclosure. In addition, §403(3)(d)(2) ***requires*** the DCI to ensure that risks to the United States and those involved in the collection of intelligence through human sources are minimized.

8. (U) Protecting the identity of individuals working with or for CIA has been of particular concern to U.S. lawmakers since the establishment of the Agency. For example, with Section 6 of the Central Intelligence Act of 1949, 50 U.S.C. 1949 §403g, Congress specifically exempted the CIA from the provisions of any law requiring the publication or disclosure of the organization, functions, names, titles, salaries or numbers of personnel employed by the Agency. Although the purpose of this law is to protect

employees of the CIA, and not assets or contacts, it indicates Congress' intent from early on to protect those working covertly for the U.S. Government.

9. (U) In 1980, Congress passed the Classified Information Procedures Act (CIPA) which sets out pretrial, trial, and appellate procedures for criminal cases involving or potentially involving classified information. Working with the Department of Justice and the courts, CIA has successfully protected intelligence sources from public release even in criminal trials where there are heightened (i.e., constitutional) considerations favoring disclosure to the defendant of all government information relevant to the defense. CIPA allows for *in camera ex parte* hearings in which the judge can rule on questions of admissibility and relevancy of classified information, including the identity of human sources who may have information pertaining to the defense, before it is introduced either to the defendant or defense counsel, or in open court. In some cases involving CIA, the judge has ordered that CIA information be turned over to the defense, but only in some unclassified form such as in a summary. In other cases, judges have reviewed the classified information and ruled that the harm to national security outweighs the defendant's legal rights to the information. In still other cases, the defense was never notified that CIA even had information bearing on the case as the judge ruled that the mere fact that CIA possessed this information was classified and outweighed any rights the defendant had. Moreover, under CIPA, the Attorney General has the authority to drop a prosecution in those cases where the risk to national security is too great.

10 (U) In 1982, Congress acted to protect human intelligence sources by passing the Intelligence Identities Protection Act of 1982, 50 U.S.C. §421 which criminalizes the revelation of a source's identity. This Act subjects anyone who reveals information that identifies a covert agent to prosecution with up to 10 years in prison and $50,000 in fines. A covert agent includes: (a) a U.S. citizen whose intelligence relationship with the U.S. Government is classified and is acting abroad as an agent, informant or source of operational assistance to an intelligence agency; and (b) an individual, other than a U.S. citizen whose past or present intelligence relationship to the U.S. is classified information and who is a present or former agent or informant of, or is of operational assistance to, an intelligence agency.

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11. (U) These statutes are just a few examples of a larger government policy to protect human sources from public disclosure.[1] There has also developed over the years a significant amount of case law which further implements this policy. For example, in Sims v. CIA, 10 S.Ct. 1981 (1985), the Supreme Court held that pursuant to the National Security Act, the DCI had the authority to protect from release to Freedom of Information Act requesters the identities of individuals conducting research on projects financed by CIA. The Supreme Court further stated that the DCI's authority to protect sources was broad, and was not limited to only those individuals who were guaranteed confidentiality.

12. (U) Most recently, President Clinton signed an Executive Order on classified national security information which came into effect in October 1995. Although it requires that agencies make greater declassification efforts than the prior Executive Order, Executive Order 12958 affords human sources extra protection from its declassification provisions. Under E.O. 12958, information that is over 25 years old and has historical value must be declassified within five years. However, information revealing the identity of a human source may continue to be protected.

13. (U) The above federal statutes and case law show a long-standing practice of protecting human sources who provide intelligence information to the U.S. Government. In carrying out its statutory obligations, the Review Board should give serious weight to this policy and afford the protection of human sources the highest priority.

III. Operational Considerations

14. (U) As the Review Board is well aware, in order for CIA officers to effectively collect intelligence around the world, they cannot acknowledge publicly that they work for CIA and, conversely, CIA cannot acknowledge a particular individual's affiliation with it. This is true even more so with sources. In addition to the risk to a source's personal safety, discovery of a CIA source would also reveal any operations he was conducting and CIA case officers with whom he was meeting or might even cast suspicion on the

[1] (U) The Freedom of Information Act (FOIA), 5 U.S.C. §552 is another example of a federal statute that allows for the protection of human sources. Although the FOIA generally mandates release of government documents, exemption b(3) allows for withholding from release information that is exempted from disclosure by statute. The National Security Act has been held by the Supreme Court to be such a withholding statute. Sims v. CIA, 105 S.Ct. 1981 (1985).

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affiliation of innocent family and friends. This is no less true with a source who no longer works for the Agency. A source's prior affiliation with CIA is normally still classified in order to protect him, his former contacts at CIA, the CIA facilities at which he may have been meeting with case officers, the cover mechanisms employed to protect his affiliation with CIA, and the operations which he conducted.

15. (U) The public disclosure of an individual's affiliation with CIA could and, in fact, has threatened the safety and lives of not only the source, but also their families, colleagues, officials of foreign governments and other foreign nationals with whom they have had contact. The Review Board will certainly recall the Proenza case (since this was released by the Board in August 1995) in which a number of Cuban officials were falsely believed to be CIA agents. They were arrested, convicted and spent years in prison for their alleged treasonous activities and their professional and personal lives were ruined. The threat of violence to those who are in fact associated with CIA is even more real. These individuals live and work in foreign countries, many of which have a local population hostile to the United States and especially CIA. If one should doubt the risks that those affiliated with CIA face, one only has to recall that, in 1992, two CIA employees were murdered while waiting to turn into CIA Headquarters in Virginia. If this type of attack is possible right at the CIA's front gate, it is not hard to imagine the personal risks that those working with the CIA abroad face. Clearly, the risk is that much greater for those who are sources: for example, as a result of Aldrich Ames' disclosures to the KGB, 10 Soviets who were covert assets of the CIA were executed.

16. (U) Incidents such as these clearly demonstrate that the policy of protecting association with the CIA is an important one. Individuals associated with CIA have been and will continue to be subjected to threats, reprisals and physical injuries from foreign intelligence services, terrorist groups, and other persons or organizations hostile to CIA or the U.S. Government. Individuals choose to undertake these risks for many different reasons, but it is with the condition that the CIA will protect their cooperation with the U.S. Government.

IV. Proposal

17. (U) In light of the foregoing, CIA believes it is important to work toward a general policy of protecting CIA sources in the JFK Collection. The Agency proposes that in

most cases a substitution for the true name be used. In prior releases of these same documents, the Review Board agreed to redact the true name and substitute "source." If the Review Board is concerned about tracking particular sources throughout the records, a particular identifying substitution can be used for an individual source throughout (for example, "Mexican source 1").

18. (S) Among the names that are currently being considered for release by the Review Board, the following are some that the CIA proposes be treated in this manner:

- True name of LIRING/3, an encrypted asset of the CIA and unilateral penetration of the Cuban Embassy. His wife also worked at the Embassy and he was apparently suspected as being CIA though it was never proven. LIRING/3 at some point disappeared and we have no way of knowing what his current situation is.

- True name of ERTHYROID/3, the unilateral penetration of the Nicaraguan Service. The Review Board will recall that it has already been fully briefed on ERTHYROID/3 and had agreed to the protection of the fact that he was a unilateral source.

- Anthony C. M. Devere (1041001210022) was [is] a member of the British Service. As such, he was [is] a liaison source. This raises concerns about protection of our liaison relationships. Moreover, Mr. Devere's identity constitutes "foreign government information" which, as the Board has already been informed, the CIA does not have the authority to release.

19. (S) Another type of name that similarly should be protected from release is the new identity provided to a defector. Although defectors do not face some of the dangers that "assets" overseas face, they are still given new identities for their protection because there is some risk to their personal safety even in the U.S. For example, in this collection the identity of Golitsyn appears in documents being reviewed this month.[2] Since the time of his defection, Golitsyn has utilized successive identities, because they have been unofficially disclosed, that have not

[2] (S) Golitsyn's identity had to be changed again. However, there is a risk that revealing this former identity could lead to the identification of Golitsyn's current identity.

been officially released and that are closely held within the Agency. This is done for his own protection and that of his family even though they live in the United States. CIA cannot, at this time, agree to the official release of Golitsyn's assumed new identities or for that matter of any defectors that appear to date in the collection.

20. (S) CIA has noted that in some cases a source is identified by only a first name or a code name. Where CIA has been unable to identify any information about that individual or there is no other source revealing information that has been revealed in the JFK Collection, it would be possible to release that name. For example, in a few documents, the name "Tota" appears. To date, CIA has been unable to determine who this person is and there does not appear to be any further source revealing information in the collection. It is probably that "Tota" is just a code name or a street name known to his colleagues. As "Tota" is a common name, such a release would not threaten the particular individual or his family, and as the person can not be identified it would not seriously undermine the U.S. Government policy to protect intelligence sources.

21. (U) The Agency recognizes that some names may be particularly important to the JFK story. In such cases, the CIA is willing to work with the Review Board to come to the appropriate resolution. CIA proposes that it conduct a record search for information on that individual. It may be that in these cases, if the person is deceased and has no living family, that the Review Board and the CIA can agree that the value of revealing the true name outweighs the need to protect that source from disclosure.

22. (U) It is our hope that the CIA and the Review Board can work out a mutually agreeable policy regarding the identity of human sources that will not undermine the important policy of protecting those who work covertly for the U.S. Government. As usual, my staff and I are available to discuss this matter with you.

John F. Pereira

John F. Pereira
Chief, Historical Review Group

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